

OCT 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMERSON PAUL BIRDTAIL, II,

Defendant - Appellant.

No. 09-30114

D.C. No. 4:08-cr-00110-SEH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted October 13, 2009^{**}

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Emerson Paul Birdtail, II appeals from the 31-month sentence imposed following his guilty-plea conviction for assault resulting in serious bodily injury, in

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. §§ 1153(a) and 113(a)(6). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Birdtail contends that the district court procedurally erred by failing to address his arguments at sentencing and that his sentence is substantively unreasonable given his positive life changes. The record reflects that the district court did not procedurally err, and that the sentence is substantively reasonable.

See United States v. Carty, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.